

## REMARKS

In the July 25, 2006 Office Action, claims 7-11 and 13-15 were rejected under 35 USC § 102 as anticipated by Fijolek (U.S. Patent No. 6,223,222) and claim 16 was rejected under 35 USC § 103 unpatentable over Fijolek.

Claims 7-11 and 13-16 are pending and under consideration. The rejections are respectfully traversed below.

### Rejections under 35 USC 102

On pages 2-4 of the July 25, 2006 Office Action, claims 7-11 and 13-15 were rejected under 35 USC § 102(e) as anticipated by Fijolek.

Claim 7 recites "a user computer, connected to the network ... including an access unit which determines predetermined quality of service features for interaction with the network" (claim 7, lines 2-3) and "a service provider computer, connected to the network, to perform one of enabling, disabling, altering and adding quality of service features in said access unit" (claim 7, lines 4-5). It is clear from the operations performed by these two computers that the "predetermined quality of service features for interaction [of the user computer] with the network" are predetermined by the service provider computer, while the access unit, which is part of the user computer, makes the determination of what quality of service features are used in interacting with the network.

Examples of "a user computer connected to the network ... including an access unit" as recited in claim 7, are the "first computer" and "terminal of a user" described in paragraphs [0006]; [0007]; and [0021] of the Substitute Specification and illustrated in FIG. 1 using a drawing of a PC identified by R1. Examples of an "access unit" as recited in claim 7, are the "dedicated device"; "autonomous device"; and a "Plug-in-Device"; described in paragraphs [0012]; [0013] and [0015] of the Substitute Specification and illustrated in FIG. 1 using a rectangle labeled ZE. Examples of "predetermined quality of service features" as recited in claim 7, are "Bandwidth"; "the time delay before a reply is received ('PING')"; and "(Delay Fluctuations)" as described in paragraph [0016] and [0022]. Put simply, the access unit decides whether a quality of service is granted or denied to the user computer and the service provider computer directs which predetermined quality of service features are available for the access unit to grant or deny.

Nothing was cited or found in Fijolek that teaches or suggests an access unit in a user computer that performs in the manner recited in claim 7. In the Office Action, cable modem CM 16 was equated with the claimed "access unit" as follows: "a user computer (i.e., CPE 18) ...

including an access unit (i.e., Cable Modem 16)" (Office Action, page 2, lines 11-12). According to the lines 3-12 in the Abstract, in Fijolek a cable modem requests a network service connection and a service provider decides whether a terminal has enough bandwidth to complete a connection over the network. No suggestion has been found anywhere in Fijolek that the cable modem or any other component at a user computer "determines predetermined quality of service features for interaction with the network" as recited in claim 7. Rather, with reference to Fig. 18, Fijolek describes "a QoS server 332 used to determine whether (cable modem termination system) CMTS 12 has available bandwidth to provide a specific quality-of-service request to a CM 16" (column 29, lines 55-59). It is also noted that "QoS server 332 may also be integral to CMTS 12" (column 30, line 4).

In other words, what was cited in Fijolek describes a server determining whether a cable modem termination system has enough bandwidth to provide a specific quality-of-service connection, along with an allegation that the cable modem in Fijolek equates to the access unit recited in claim 7. The following non-limiting analogy is helpful in contrasting the Applicant's access unit against the QoS server in Fijolek, as well as contrasting the access unit against the cable modem in Fijolek: Simply put, a server determining QoS is different from an access unit deciding whether a quality of service is granted or denied to the user computer associated with the access unit. In addition, neither the CMTS 12 nor the CM 16 grant or deny QoS.

Furthermore, what was cited in Fijolek as disclosing the service provider computer recited in claim 7 was QoS server 332 which is used to "provide a QoS identifier to the cable modem to perform communications at the requested CoS and rate" (Office Action, page 2, lines 16-17), where presumably "CoS" should be "QoS". The alleged operation of the QoS server of Fijolek quoted in the preceding sentence does not meet the limitations recited in claim 7. What is described in the Office Action is a request from the cable modem to the QoS server and a response from the QoS server to the cable modem identifying the QoS. As discussed above, claim 7 recites that the access unit makes the determination of QoS for a specific interaction with the network, not the service provider computer. Instead, the service provider computer performs "one of enabling, disabling, altering and adding quality of service features in said access unit" (claim 7, lines 4-5), so that the access unit can make that determination. Nothing has been cited or found in Fijolek suggesting that the QoS server supplies anything more than "a QoS identifier," in other words, the result of the determination by the QoS server regarding the level of QoS that the cable modem can use.

For all of the above reasons, claim 7, as well as claims 8-11 and 13-16 which depend therefrom, patentably distinguish over Fijolek.

### **Rejections under 35 USC 103**

In item 12 on pages 4 and 5 of the Office Action, claim 16 was rejected under 35 USC § 103(a) as unpatentable over Fijolek. However, as discussed above, claim 16 depends from claim 7; thus, claim 16 is allowable for the reasons discussed in regard to claim 7.

In addition, it was admitted in the Office Action that Fijolek "does not specifically state that the cable modem is an integral component to the user computer" (Office Action, page 5, lines 2-3). What was cited in Fijolek states that "QoS server 332 may also be integral to CMTS 12" (column 30, line 4). In other words what was cited in Fijolek describes a server integral to a cable modem termination system (CMTS) which teaches away from the cable modem CM 16 as an integral component of the user computer. Instead, it suggests that the cable modem CM 16 is a part of the CMTS 12 which is integral to the QoS server 332. For these additional reasons, claim 16 distinguishes over the applied art and is allowable.

### **CONCLUSION**

It is submitted that Fijolek does not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 7-11 and 13-16 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Finally, if there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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